

# EXHIBIT 79

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Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

- HIGHLY CONFIDENTIAL -

VIDEOTAPED 30 (b) (6) DEPOSITION OF  
UNITED STATES ARMY  
through the testimony of  
COLONEL JOHN HORNING  
September 29, 2023  
1:06 p.m.

Reported by: Bonnie L. Russo  
Job No. 6105371

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1	Videotaped 30(b)(6) Deposition of	1	APPEARANCES (CONTINUED):
2	United States Army through the testimony of	2	
3	Colonel John Horning held at:	3	Also Present:
4		4	Mohamed Al-Darsani, United States Army
5		5	Orson Braithwaite, Videographer
6	Paul, Weiss, Rifkind, Wharton & Garrison, LLP	6	
7	2001 K Street, N.W.	7	
8	Washington, D.C.	8	
9		9	
10		10	
11		11	
12		12	
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14		14	
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16		16	
17		17	
18	Pursuant to Notice, when were present on behalf	18	
19	of the respective parties:	19	
20		20	
21		21	
22		22	
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1	APPEARANCES:	1	INDEX
2		2	EXAMINATION OF COLONEL JOHN HORNING PAGE
3	On behalf of the Plaintiffs:	3	BY MS. GOODMAN 9
4	KATHERINE CLEMONS, ESQUIRE	4	BY MS. CLEMONS 104
5	ALVIN CHU, ESQUIRE	5	
6	CHASE PRITCHETT, ESQUIRE	6	
7	UNITED STATES DEPARTMENT OF JUSTICE	7	EXHIBITS
8	450 Fifth Street, N.W.	8	Exhibit 165 Personnel Consulted 36
9	Washington, D.C. 20530	9	Exhibit 166 E-Mail 64
10	katherine.clemons@usdoj.gov	10	Attachment ARMY-ADS-0000064495-553
11	alvin.chu@usdoj.gov	11	Exhibit 167 E-Mail Chain dated 7-2-21 71
12	chase.pritchett@usdoj.gov	12	Attachment ARMY-ADS-0000245860-871
13		13	Exhibit 168 E-Mail Chain dated 6-21-22 80
14	On behalf of the Defendant:	14	Attachment ARMY-ADS-000007763-777
15	MARTHA L. GOODMAN, ESQUIRE	15	Exhibit 169 E-Mail Chain dated 8-19-22 83
16	LEAH HIBBLER, ESQUIRE		ARMY-ADS-0000069378-379
17	PAUL, WEISS, RIFKIND, WHARTON &	16	
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1 other companies are also acquiring ads so the 2 dynamics of the marketplace make an IDIQ a 3 little bit more appropriate of an acquisition 4 vehicle.	1 different from each year to year. The only 2 thing within the IDIQ is there is just an 3 overall not to exceed. 4 BY MS. GOODMAN: 5 Q. And that -- 6 A. -- but it could be divided into the 7 various areas or not spent at all. It just 8 cannot exceed a certain amount over the course 9 of a number of years.
5 BY MS. GOODMAN: 6 Q. Turning to the page ending in 13, 7 the little Bates numbers at the bottom. 8 A. Okay. 9 Q. Item No. 0023. Do you see where I 10 am at the top of the page? 11 A. I do. 12 Q. And that item number is a CLIN. 13 Yes? 14 MS. CLEMONS: Objection. Form. 15 Foundation. 16 THE WITNESS: One second. Let me 17 just review. Yes.	10 Q. Is there any other line item, CLIN, 11 contract line item number -- 12 A. Uh-huh. 13 Q. -- under which digital advertising 14 can be purchased other than 23? 15 MS. CLEMONS: Objection. Form. 16 THE WITNESS: I think that depends 17 on how we're defining digital advertising. 18 Only in that some people may see like social 19 media specifically as digital advertising even 20 if we don't use it in that -- necessarily in 21 that context, and social media is a separate 22 task order.
1 Q. And this contract sets -- does not 2 set a price, does not set a unit, does not set 3 a maximum of purchase, correct? 4 MS. CLEMONS: Objection. Form. 5 THE WITNESS: This particular 6 section of the IDIQ does not identify, and I 7 think that's the -- that's sort of the 8 flexibility of the IDIQ because this particular 9 item here will then have a separate task order. 10 That's the national media talent and 11 furnishings task order, which is then awarded 12 at a specific amount but the IDIQ doesn't 13 indicate or designate what that would be, and 14 that's part of the -- I guess the flexibility 15 of this kind of a contract, is that it doesn't 16 have to indicate that number. 17 That can be done on the task orders 18 and the task orders are then renewed each year 19 as we previously discussed, and awarded then 20 each year and so that number could change each 21 year. And I think that's part of the flexible 22 piece of this as well, is that it might be	1 I don't -- we don't consider that 2 advertising, but some people do think 3 anything -- anything that's the on the Internet 4 is advertising or might bundle it together in 5 that. 6 BY MS. GOODMAN: 7 Q. Okay. Now, if you turn to page 8 ending in 51, this is the performance work 9 statement. 10 Do you see that? 11 A. Yes. 12 Q. And the performance -- performance 13 work statement sets out the responsibilities of 14 the contractor, correct? 15 MS. CLEMONS: Objection. Form. 16 THE WITNESS: Yes. The performance 17 work statement identifies those things that the 18 contractor will do for the army. 19 BY MS. GOODMAN: 20 Q. And you see Number 1, that is -- 21 says: "General." Do you see where I am? 22 A. Yes.

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<p>1 Q. If you go down to the first sentence  2 below the last bullet, where it says: "Army,  3 civilian personnel recruiting," so just go to  4 the sentence just below.</p> <p>5 A. Yes.</p> <p>6 Q. This says: "The government shall  7 neither supervise contractor employees nor  8 control the method by which the contractor  9 performs the required tasks."</p> <p>10 A. Uh-huh.</p> <p>11 Q. Is that a true statement of the  12 government's -- of the rules governing the --  13 the rule that applies to the government's work  14 under this contract?</p> <p>15 MS. CLEMONS: Objection to form.</p> <p>16 THE WITNESS: Yes, that's pretty  17 common to see in any contract, not just this  18 one, because ultimately a contractor who has  19 bid and won a contract has some latitude in --  20 in the performance of the work. I can't tell  21 the contractor you need two people to do this.  22 The contractor says, well, I think I can do it</p>	<p>1 MS. CLEMONS: Objection to form.</p> <p>2 THE WITNESS: I'm not the  3 contracting officer, but in practice my  4 experience has been -- the examples that --  5 that I gave you I think would represent  6 examples of the method.</p> <p>7 We can't tell the contractor you  8 should have this type of internal organization  9 or you should do this type of prework or you  10 should use this type of, unless it's a  11 requirement to the contract, a computer system.  12 There could be something in the contract where  13 you have to operate on a computer system.  14 Maybe that's part of the contract.</p> <p>15 But sort of the administrative side  16 of it, that's the type of things where we  17 wouldn't tell them how many people, how often  18 you work, when you come or you don't come, how  19 you run your -- your leave policy or your  20 holiday policies, things like that. That's in  21 a sense the method in which they perform it  22 that we would not dictate to them.</p>
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<p>1 with one.</p> <p>2 So I can't supervise. I also can't  3 say your person should be there eight hours a  4 day, why are they only in the office five hours  5 a day. That's -- I can't supervise them in the  6 conduct of their work. The contractor has the  7 ability so long as they are delivering to do  8 those things. So I don't control, and -- and I  9 am -- and in any contract, this would be very  10 similar. I would be surprised if this sentence  11 is not in every one where I can't tell you the  12 method or the number of people or which  13 computer system you'll use, Windows or Mac, for  14 example, or whichever. That's up to the  15 contractor so long as they are delivering the  16 deliverables per the terms of the overall  17 contract.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. And so what else is meant by the  20 government shall not control the method by  21 which the contractor performance the required  22 task?</p>	<p>1 BY MS. GOODMAN:</p> <p>2 Q. Can the government dictate the  3 method by which the advertising agency  4 purchases paid media --</p> <p>5 MS. CLEMONS: Objection to form.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. -- under this contract?</p> <p>8 MS. CLEMONS: Objection to form.</p> <p>9 Foundation.</p> <p>10 THE WITNESS: Can you be specific a  11 little bit more on -- what do you mean the  12 method that we purchase? Do you mean what kind  13 of computer system is used to purchase it, or  14 what -- if you could be a little more specific  15 I can maybe provide a better answer.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. Sure. Can the government dictate --  18 strike that.</p> <p>19 Can the government control the  20 method by which DDB goes out and buys digital  21 display advertising, for example?</p> <p>22 MS. CLEMONS: Objection to form.</p>

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<p>1 Foundation.</p> <p>2 THE WITNESS: Part of what the --</p> <p>3 the agency pitches or any contractor pitches in</p> <p>4 pursuit of a contract is their abilities. It's</p> <p>5 there capability: What they can and can't do,</p> <p>6 how they do business, why the government even</p> <p>7 believes you could even do this contract.</p> <p>8 Obviously we wouldn't want to go</p> <p>9 with somebody who was cheap and realize, well,</p> <p>10 you don't even really have the capability to do</p> <p>11 this.</p> <p>12 And so how they purchase media is --</p> <p>13 is sort of part of what was all in -- in -- I</p> <p>14 don't want to say the pitch, but the process of</p> <p>15 evaluating their proposal writ large, which the</p> <p>16 government looked into. It looked at their</p> <p>17 capability to wit that DDB as a member of</p> <p>18 Omnicom Worldwide also had the ability to tap</p> <p>19 into a professional agency whose strength was</p> <p>20 media buying, OMD, and their processes. And we</p> <p>21 were buying into their ability to deliver what</p> <p>22 we needed, which was to buy media.</p>	<p>1 work statement definitions and acronyms.</p> <p>2 A. Uh-huh.</p> <p>3 Q. 2.1.3 defines --</p> <p>4 A. Yep.</p> <p>5 Q. -- contracting officer, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And it's accurate that the</p> <p>8 contracting officer is the only individual who</p> <p>9 can legally bind the government, correct?</p> <p>10 MS. CLEMONS: Objection to form.</p> <p>11 THE WITNESS: Correct. Yes. I -- I</p> <p>12 believe as I stated it and what the actual</p> <p>13 definition per this is largely the same and</p> <p>14 intended to mean the same thing.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q. You passed the test. I made you</p> <p>17 smile. Okay.</p> <p>18 2.1.4, contracting officer's</p> <p>19 representative, the COR, this -- it is</p> <p>20 accurate, sir, that the COR does not have the</p> <p>21 authority to change the terms and conditions of</p> <p>22 the contract, correct?</p>
<p>1 We don't necessarily dictate that</p> <p>2 you must buy it this way, on this system, on</p> <p>3 this frequency, or -- but that you have the</p> <p>4 capability demonstrated and -- and I think that</p> <p>5 everyone would agree OMD is a demonstrated</p> <p>6 capability of which to buy national media.</p> <p>7 And so understanding that they</p> <p>8 brought that and that was one of the supporting</p> <p>9 reasons of why they were even awarded the</p> <p>10 contract, because they have the capabilities,</p> <p>11 we don't then go back and tell them how to</p> <p>12 execute those things for which they have</p> <p>13 already proven an ability to do.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Can you turn to page ending in 60.</p> <p>16 MS. CLEMONS: And we've been going a</p> <p>17 little over an hour, so I think that we should</p> <p>18 probably try to take a break soon.</p> <p>19 MS. GOODMAN: Sure. Let's just try</p> <p>20 to get through this document.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. This is Section 2 of the performance</p>	<p>1 A. That's 100 percent correct.</p> <p>2 Q. And let's go to the next page, 61.</p> <p>3 2.1.16, which is the definition of</p> <p>4 subcontractor.</p> <p>5 A. 16. Okay.</p> <p>6 Q. It's accurate, sir, that the</p> <p>7 government does not have privity of contract</p> <p>8 with any subcontractor, correct?</p> <p>9 MS. CLEMONS: Objection to form.</p> <p>10 THE WITNESS: My testimony is that</p> <p>11 2.1.16, subcontractor, indeed says: "A</p> <p>12 subcontractor is one that enters into a</p> <p>13 contract with the prime contractor and that the</p> <p>14 government does not have privity of contract</p> <p>15 with the subcontractor."</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. Okay. Let's go to Page 74. I am</p> <p>18 looking at 5.12. I guess we should --</p> <p>19 A. Right.</p> <p>20 Q. Part 5 starts on Page 68, and it's</p> <p>21 labeled: "Specific tasks."</p> <p>22 A. Correct.</p>

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<p>1 Q. So 5.12.1 sets forth the 2 contractor's specific task of developing and 3 presenting a plan for participation in the 4 annual upfront media market, correct? 5 MS. CLEMONS: Objection to form. 6 THE WITNESS: I'm sorry. Could you 7 say the number again because I'm not seeing 8 what you -- 9 BY MS. GOODMAN: 10 Q. 5.12.1. 11 A. Oh, Point 1. Sorry. 12 Correct. 13 Q. Okay. And under 5.12 it's the 14 contractor's obligation to provide the 15 planning, execution analysis, and stewardship 16 of all national and local media channels, 17 including traditional, online, and emerging 18 media platforms, correct? 19 A. That is indeed what this contract 20 states. 21 It's also important to note that the 22 task order itself and the performance work</p>	<p>1 next one ends so that they can -- so there 2 cannot be a break. But -- but that is what 3 indicates that that next task order you're 4 authorized to begin work based on the PWS of 5 that next version. 6 MS. GOODMAN: Okay. Shall we take a 7 break. 8 MS. CLEMONS: Yeah. 9 THE VIDEOGRAPHER: The time is 10 p.m. this ends Unit No. 1. We're off the 11 record. 12 (A short recess was taken.) 13 THE VIDEOGRAPHER: The time is 14 p.m. This begins Unit No. 2. We are on the 15 record. 16 (Deposition Exhibit 166 was marked 17 for identification.) 18 BY MS. GOODMAN: 19 Q. Colonel, I am handing you Exhibit 20 166, ARMY-ADS-64495 through 64553. And this is 21 an e-mail produced by the government attaching 22 a number of task orders associated with the</p>
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<p>1 statement of the task order of national media 2 talent and furnishings will have more detail 3 than the base IDIQ will. 4 Q. Okay. And can you turn to page 5 ending in 99. I am looking under H.9, annual 6 marketing plan execution letters of technical 7 direction procedures. 8 Do you see where I am? 9 A. I do. 10 Q. What is a letter of technical 11 direction under this contract? 12 A. My understanding of a letter of 13 technical direction is that once a task order 14 has been awarded, funded, then our -- our 15 contracting command, MICC, at Fort Knox will 16 issue a letter of technical direction which 17 then authorizes the beginning of work under 18 that task order. 19 As the task orders are sort of 20 reauthorized or renewed each year after the 21 period of performance -- obviously the work 22 starts before a period of performance of the</p>	<p>1 IDIQ base contract, correct? 2 A. Yes, that appears to be so. 3 Q. And if we turn to page ending in 4 64507. 5 A. Yes. 6 Q. And this task order is 22 pages. 7 My question is: Do you recognize 8 this as the task order -- the national media 9 talent and furnishing task order? 10 MS. CLEMONS: Objection to form. 11 THE WITNESS: Yes. 12 BY MS. GOODMAN: 13 Q. Did the army purchase via this 14 contract any digital programmatic display 15 advertising? 16 MS. CLEMONS: Objection. Form. 17 Foundation. 18 THE WITNESS: I would need to see 19 the actual media plan, whether that flowchart, 20 firm, flex, and any invoices to know for sure. 21 However, it's extremely likely that we did 22 purchase display advertising through this</p>

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<p>1 Doesn't have to be. They could be two  2 different people, and right now or even since  3 -- since maybe on or about January of 2022, we  4 had specifically divided program manager to --  5 and contracting officer's representative in  6 most all of our contracts.</p> <p>7 So in this case at this time,  8 considering these dates, it's entirely  9 possible -- and indeed I believe likely -- that  10 the program manager was also the COR at the  11 time. And so, frankly, this could have been  12 one of the reasons why we had shifted to  13 changing to separate them.</p> <p>14 Q. And you said that your understanding  15 after talking with your colleagues more expert  16 within the contracting is that a government  17 contractor is required to be able to pay its  18 subs regardless of whether the government has  19 paid them yet.</p> <p>20 Am I recollecting that correctly?</p> <p>21 A. Yes.</p> <p>22 MS. CLEMONS: Objection to form.</p>	<p>1 research on. How far that extends below, I do  2 not know.  3 (Deposition Exhibit 168 was marked  4 for identification.)  5 BY MS. GOODMAN:  6 Q. Okay. I am handing you Exhibit 168,  7 ARMY-ADS-7763 through 7777. And this is an  8 e-mail chain regarding the same requests for  9 equitable adjustment that we were looking at in  10 the prior exhibit.  11 Do you see that as evident by the  12 top e-mail of this document?  13 MS. CLEMONS: Objection to form.  14 Foundation.  15 THE WITNESS: Okay. I mean, I see  16 that it's -- that it's also a request for  17 equitable adjustment, though, it's a -- it's a  18 year later.  19 BY MS. GOODMAN:  20 Q. Right.  21 A. So I assume -- I don't want to  22 assume. It could potentially be the same one.</p>
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<p>1 BY MS. GOODMAN:  2 Q. And so what is the requirement on  3 behalf of -- what is a contractor -- strike  4 that.  5 Is a contractor thus required to pay  6 its subcontractors regardless of whether the  7 government has yet paid them, meaning the  8 contractor?</p> <p>9 MS. CLEMONS: Objection to form.  10 THE WITNESS: That is my  11 understanding of the requirement.  12 BY MS. GOODMAN:  13 Q. Okay. Is a subcontractor required  14 to pay a vendor regardless of whether the  15 government has yet paid out to the main, prime  16 contractor --  17 MS. CLEMONS: Objection.  18 BY MS. GOODMAN:  19 Q. -- for such purchases?  20 MS. CLEMONS: Objection. Form.  21 THE WITNESS: That's not an area  22 that I asked or -- or was able to -- to</p>	<p>1 Q. If you turn to Page 7765.  2 A. Okay.  3 Q. You see that Mr. Green-Trueblood is  4 writing to Ron and her first sentence says:  5 "On July 2, 2021" --  6 A. Yeah, I see that.  7 Q. -- "DDB Chicago Inc. submitted a  8 request for equitable adjustment"?  9 And that's the same date as  10 reflected in the prior exhibit?  11 A. Correct.  12 Q. Okay. So now you agree that this  13 Exhibit 168 is talking about the same REA in  14 the prior -- as in the prior exhibit?  15 A. Yes.  16 Q. Okay. And you see that DDB has  17 reduced its request for equitable -- equitable  18 adjustment by \$260,000, correct?  19 MS. CLEMONS: Objection. Form.  20 Foundation.  21 THE WITNESS: I see the line that  22 says DDB will decrease its request for</p>

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1        equitable adjustment by \$260,000. 2            BY MS. GOODMAN: 3        Q. Okay. Does -- do you know what -- 4        whether the contracting officer accepted DDB's 5        REA? 6        MS. CLEMONS: Objection to form. 7        Foundation. 8        THE WITNESS: I do not know the 9        ultimate determination of this particular 10      request for equitable adjustment. 11      BY MS. GOODMAN: 12      Q. And if you turn to page ending in 13      7772, this is a letter from DDB to the 14      contracting officer, correct? 15      MS. CLEMONS: Objection. Form. 16      Foundation. 17      THE WITNESS: Yes. I see it's a 18      letter from DDB to Ms. Green-Trueblood. 19      BY MS. GOODMAN: 20      Q. And if you go under Roman I, the 21      second paragraph where it begins: "DDB 22      subcontractor," do you see where I am?	1        And this is an e-mail where OMD is 2        requesting that money be moved from one bucket 3        of digital advertising to another bucket 4        because DDB made an error which resulted in a 5        approximately \$26,000 overspend, correct? 6        MS. CLEMONS: Objection to form. 7        Foundation. 8        THE WITNESS: I see the e-mail 9        and -- and recognize it as a discussion between 10      then Colonel Morris making recommendation to 11      some of the business management team on -- on 12      his perspective as the branch chief of our 13      national media team on what he recommends -- 14      ultimately what he recommends, we recommend -- 15      on how to deal with an expenditure that didn't 16      match the army-approved media plan. 17      BY MS. GOODMAN: 18      Q. And what -- what do you understand 19      Mr. -- or Colonel Morris to mean when he 20      writes: "DDB made the error, and they can pay 21      for it IMO"? 22      MS. CLEMONS: Objection to form.
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1        A. I do. 2        Q. And this says: "DDB's subcontractor 3        OMD USA LLC (OMD) purchased the WYW2 media for 4        the army pursuant to the approved tactical plan 5        with a good-faith understanding that the army 6        would pay for the purchases it had authorized." 7        Do you have any reason to doubt that 8        DDB in fact -- that DDB's subcontractor OMD, in 9        fact, purchased the media as stated in this 10      sentence? 11      MS. CLEMONS: Objection to form. 12      THE WITNESS: Based on the -- this 13      and the other exhibits presented, I don't have 14      any reason to believe that this is not 15      accurate. 16      MS. GOODMAN: Okay. You can put 17      that to the side. 18      (Deposition Exhibit 169 was marked 19      for identification.) 20      BY MS. GOODMAN: 21      Q. I am handing you 169 ARMY-ADS-69378 22      through 379.	1        Foundation. 2        THE WITNESS: So in an instance 3        like -- like this where there could be an error 4        in a particular -- not matching exactly the 5        army-approved plan, then there is some room for 6        the parties to negotiate on how to resolve. 7        26,000 out of 36 million is -- well, 26,000 is 8        a lot to me, but it's a fraction of the 9        total -- of a total award amount for national 10      media. 11      And we may determine that it could 12      be in our interest to assess that while we've 13      still received the benefit, it still got 14      actually put into the market. Consumers still 15      saw what we were doing even. If it wasn't the 16      exact plan that we approved, we can go back and 17      say we can work this out or we can stand on no, 18      that's your mistake, you eat the cost. 19      And that is something that would be 20      discussed with the -- with DDB and with the KO 21      in general. In this case you have Colonel 22      Morris making his opinion known, although he is

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<p style="text-align: right;">Page 86</p> <p>1 not the deciding authority on how we might 2 resolve an error. 3 BY MS. GOODMAN: 4 Q. And when you say that's your 5 mistake, you eat the cost, that's something 6 that the army could tell one of its contractors 7 when it spends outside of what it is authorized 8 to spend; is that correct? 9 MS. CLEMONS: Objection to form. 10 THE WITNESS: Ultimately the 11 contractor is responsible for the terms of the 12 performance work statement. And the 13 contracting officer's representative, in 14 surveilling and overseeing the delivery of the 15 elements of the performance work statement, 16 could make a determination that something was 17 or was not met or was or was not delivered 18 appropriately or accordingly. 19 Ultimately it would be the KO's 20 determination, but I believe it to be accurate 21 to say that in instances in which a delivery or 22 a deliverable or the manner in which something</p>	<p style="text-align: right;">Page 88</p> <p>1 their own operating budget, expenses, profits. 2 BY MS. GOODMAN: 3 Q. Does the army have a contract with 4 Google relative to digital advertising? 5 MS. CLEMONS: Objection to form. 6 Foundation. 7 THE WITNESS: I'm not aware of a 8 contract between the army and Google. I 9 understand Google is one of the media vendors 10 that the army purchases inventory from with the 11 facilitation of our media buying agency. 12 BY MS. GOODMAN: 13 Q. And the facilitation of your media 14 buying agency, that includes DDB and its 15 subcontractor OMD; is that correct? 16 MS. CLEMONS: Objection to form. 17 THE WITNESS: The army has a 18 contract with DDB. OMD, an affiliate who is a 19 subcontractor to DDB does the labor associated 20 with the purchase and using whatever it is, 21 their media buying service, back to our earlier 22 discussion about why they, you know, were</p>
<p style="text-align: right;">Page 87</p> <p>1 was done, if it did not meet the army's 2 requirements per the PWS, that the army, the 3 government could refuse payment for something 4 that didn't meet -- didn't meet standards. 5 BY MS. GOODMAN: 6 Q. And when the army -- in such a 7 circumstance that the army refuses payment, is 8 it the contractor's responsibility to still pay 9 the cost to the vendor? 10 MS. CLEMONS: Objection. Form. 11 Foundation. 12 THE WITNESS: It's my 13 understanding -- although I think that probably 14 gets into some other contract piece that I may 15 not be expert, but in my understanding, yes. 16 Ultimately DDB made a commitment 17 here to their subcontractor who made a 18 commitment to a vendor and funds were already 19 committed, spent. I'm not sure that they use 20 the same sort of budget terms that we use. And 21 that in this case, DDB itself could be told 22 that they will have to absorb that cost out of</p>	<p style="text-align: right;">Page 89</p> <p>1 awarded the contract by their abilities and 2 capabilities system they have to purchase the 3 media, to physically conduct the transactions 4 and then also to load and traffic and send the 5 creative assets to the vendors who are giving 6 us the space or whoever, the display area, 7 wherever, TV, radio, anything, Internet as 8 well, the same. 9 And then ultimately though, the 10 costs for all of those things are still sent 11 back to the army so when we talk about the 12 invoice review, the media COR gets the invoice 13 from Google or whichever vendor and then 14 ultimately has to match that back up to the 15 media plan and pays that. 16 BY MS. GOODMAN: 17 Q. And in the course of your review of 18 invoices in order to prepare for the deposition 19 today, you saw that invoices are issued from a 20 vendor to OMD, correct? 21 MS. CLEMONS: Objection to form. 22 Foundation.</p>

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<p>1        THE WITNESS: So actually, as I  2        recall, looking at several invoices, the  3        invoice still had army as its To. It was  4        provided physically or e-mailed physically  5        first to OMD, who would collect all of the  6        various invoices, bundle them, provide them to  7        DDB who reviews, who then would be the  8        responsible party for entering that bundled --  9        and it could be by a couple weeks, a month,  10       whatever the time period may be. Provides that  11       bundled set of invoices after their review and  12       certification that these do represent to the  13       best of their knowledge, true and accurate,  14       into the wide area work flow system whereby  15       then the COR can see them and then review them  16       against the army's approved media plan.</p> <p>17       BY MS. GOODMAN:</p> <p>18       Q. And so in -- basically, there are a  19       few steps, vendor issues invoice to OMD, OMD  20       bundled invoices to DDB and then DDB issues  21       invoices to the army, correct?</p> <p>22       MS. CLEMONS: Objection to form.</p>	<p>1        context of an approved plan, the discussion is  2        and then there is an expectation of what we are  3        getting for it as well.</p> <p>4        We don't approve a plan just based  5        on dividing up the money. It's also with what  6        do we believe we are getting for each of those  7        divisions of money on the various products or  8        the various inventories, creative deliveries  9        that, you know, we may be purchasing in the  10       media plan.</p> <p>11       BY MS. GOODMAN:</p> <p>12       Q. Does the army negotiate the price of  13       digital media with any vendor?</p> <p>14       MS. CLEMONS: Objection to form.</p> <p>15       Foundation.</p> <p>16       THE WITNESS: It depends. There are  17       negotiations that occur in the context of  18       building out the plan, specifically when we are  19       talking -- we're at the level of the tactical  20       plan. And there are -- there is more than one  21       vendor out there and as we are developing a  22       tactical plan, we may receive proposals from</p>
<p>1        THE WITNESS: So for cost CLIN items  2        or in other direct expense, where it is not a  3        labor cost and it's not other type of contract  4        line item, for a cost CLIN like this. Yeah,  5        the vendor issues the invoice, although issues  6        to -- it is still to army, but provides the  7        physical invoice for routing first through OMD  8        and media.</p> <p>9        First through OMD. OMD as the  10       affiliate subcontractor then bundles and sends  11       to DDB and then DDB personnel are responsible  12       for loading them into the wide area work flow.</p> <p>13       BY MS. GOODMAN:</p> <p>14       Q. Okay. Does the army play any direct  15       role in negotiating the purchase of any digital  16       media?</p> <p>17       MS. CLEMONS: Objection to form.</p> <p>18       THE WITNESS: The army plays a role  19       in that we are the decision authority of what  20       gets placed when and where and the amount in  21       which we are spending on it. How much we are  22       dedicating to, and then of course, in the</p>	<p>1        vendors and in that proposal, hey, this is what  2        we can do, here's an example of how we will,  3        you know, support you, what we can provide, we  4        may or may not like all of the items or they  5        may be fantastic but maybe it's too much or  6        maybe it's not interesting to us.</p> <p>7        So there is some negotiation from  8        the vendor and us as a team between the army,  9        the DDB mission task lead and the media for  10       this case and the OMD team to review what is  11       proposed by a vendor and maybe counter-propose  12       or accept or deny altogether until ultimately  13       we get to something that we are all comfortable  14       that this represents something we are  15       interested in and we believe it's at a fair  16       price for what is being offered, and then we  17       will move towards the actual sort of -- we'll  18       book that or we'll approve those items as a  19       part of the plan.</p> <p>20       BY MS. GOODMAN:</p> <p>21       Q. Did the army purchase any display  22       advertising directly from Google?</p>

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